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DISP Federal Communications Commission

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 96-105
Table of Allotments,) RM-8793
FM Broadcast Stations.) RM-8852
(Ely, Hermantown & Pine City,)
Minnesota, and Siren, Wisconsin)¹)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 3, 1997

Released: January 10, 1997

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the Notice of Proposed Rule Making and Order To Show Cause, 11 FCC Rcd 5312 (1996), issued in response to a petition filed by Harbor Broadcasting, Inc. ("Harbor"). Harbor proposed the substitution of Channel 221C3 for Channel 221A at Hermantown, Minnesota, and modification of its construction permit to specify operation on Channel 221C3. Harbor also requested substitution of Channel 233A for Channel 221A at Ely, Minnesota, and substitution of Channel 265A for Channel 221A at Pine City, Minnesota, to accommodate the upgrade at Hermantown. Harbor and Granite Broadcasting Corporation ("Granite") filed comments. Badger Broadcasting Corporation ("Badger") and Phillips Broadcasting Company, Inc. ("Phillips") filed counterproposals.²

¹ The community of Siren, Wisconsin, has been added to the caption.

² The counterproposal filed by Badger was put on public notice on August 6, 1996, Report No. 2145 (RM-8852). The counterproposal filed by Phillips was not put on public notice. Phillips, licensee of Stations WMEQ-FM and WMEQ-AM, Menominee, Wisconsin, proposed the substitution of Channel 221C2 for Channel 221C3 at Menominee. Phillips indicates that the upgrade at Menominee would be made possible by the substitution of Channel 265A for Channel 221A at Pine City, Minnesota. The proposal filed by Phillips is not, however, counter to this proceeding but is instead contingent upon the outcome of this proceeding. Commission policy does not provide for the acceptance of contingency proposals elsewhere based on speculative results particularly where the proceeding is contested. See Oxford and New Albany, Mississippi, 3 FCC Rcd 615 (1988); recon. denied, 3 FCC Rcd 6626 (1988). Should the substitution be made at Pine City, Minnesota, Phillips may file an application for Channel 221C2 at Menominee in accordance with the one-step application process. See 8 FCC Rcd 4735, effective August 18, 1993.

Harbor and Badger filed reply comments.³

2. Badger counterproposed the allotment of Channel 265A to Siren, Wisconsin, as that community's first local service. Badger states that Siren is located in Burnett County (1990 population 13,084 people) in northwestern Wisconsin. According to Badger, Siren has a population of 863 people and is deserving of a local radio station. Further, Badger states that it will file an application for Channel 265A to provide Siren and the surrounding area with its first local broadcast service.

3. Granite, licensee of Station KBJR(TV), Superior, Wisconsin, states its concerns that Harbor's FM signal for Channel 221C3 will interfere with or blanket the signal of Station KBJR(TV). While Granite indicates that it takes no position on whether Harbor's proposal is in the public interest, it is concerned that operation on Channel 221C3 at Hermantown will cause interference to Station KBJR(TV). Granite requests that if the substitution is approved, the authorization be conditioned to require Harbor to take all necessary steps to correct any blanketing or other prohibited forms of interference to Station KBJR(TV) as a result of the upgrade.

4. In reply comments, Harbor states that it does not believe the counterproposal filed by Phillips to substitute Channel 221C2 for Channel 221C3 at Menominee, Wisconsin, is in conflict with this proceeding. Harbor points out that Phillip's proposal is made possible by the substitution at Pine City. Harbor believes, however, that the upgrade potential for Station WMEQ-FM, Menominee, provides an additional public interest reason for approving Harbor's proposal. With respect to Granite's concerns over blanketing interference, Harbor contends that the issue is properly addressed at the application stage where the construction permit would recite the requirements of Section 73.318 of the Commission's Rules. With respect to the counterproposal filed by Badger, Harbor states that Channel 289A can be allotted to Siren, Wisconsin, providing the community with a first local service, while permitting Harbor's upgrade and related channel changes. Harbor indicates that its engineering study demonstrates that there is an area of 110 square kilometers which would provide 100% city grade coverage over Siren on Channel 289A, and that a larger area and population would be served by allotment of Channel 289A rather than Channel 265A.

5. Badger submitted reply comments reaffirming its interest in the allotment of Channel 265A at Siren, Wisconsin. Badger argues that Channel 289A, as suggested by Harbor, is technically inferior to Channel 265A. According to Badger, the allotment of Channel 289A at Siren would have site problems as the channel must be site restricted northwest of the community in an area of two designated wildlife areas. Badger stresses that allotment of Channel 289A rather than Channel 265A would impair the site selection process, negatively

³ Badger filed a motion to accept late reply comments and Harbor filed an opposition to acceptance of these comments. Badger's comments have not been accepted since they do not provide information of decisional significance.

impacting on any applicant's ability to provide a first local service to Siren.

6. Based on the above information, we believe the public interest would be served by the substitution of Channel 221C3 for Channel 221A at Hermantown, Minnesota. A staff engineering analysis has determined that Channel 221C3 can be allotted to Hermantown at Harbor's specified site.⁴ To accommodate the upgrade at Hermantown, we shall substitute Channel 233A for Channel 221A at Ely, Minnesota, and modify the license for Station WELY-FM to specify operation on Channel 233A.⁵ We shall also substitute Channel 265A for Channel 221A at Pine City, Minnesota, and modify the license for Station WCMP-FM accordingly.⁶ In accordance with Section 1.420(g) of the Commission's Rules, we have authorized a modification of the construction permit for Channel 221A (BPH-950206MS) at Hermantown to specify operation on Channel 221C3. Since the communities of Ely, Hermantown and Pine City are all located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained for these allotments. The concerns expressed by Granite with respect to interference to Station KBJR-TV, Channel 6, are more appropriately addressed at the application stage. Once an application has been filed specifying an exact site, the Commission has the option of placing conditions on a construction permit if it appears there is an interference problem.

7. In response to the counterproposal filed by Badger, we shall allot Channel 289A to Siren, Wisconsin, to provide the community with a first local service. Channel 289A can be allotted to Siren provided there is a site restriction eight kilometers (five miles) northwest of the community.⁷ The site restriction will prevent a short spacing to Station WCFW, Channel 289C3, Chippewa Falls, Wisconsin. Since the community of Siren is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained for this allotment. We disagree with Badger's argument that Channel 289A is not equivalent to Channel 265A. The Commission considers channels of the same class to be equivalent unless showings have been made that a station cannot be constructed for reasons such as environmental consequences or air hazards. See Vero Beach, Florida, 3 FCC Rcd 1049 (1988), rev. denied, 4 FCC Rcd 2184, 2185 (1989). Although Badger asserts that, because of wildlife areas, site selection would be limited which could render the allotment unusable, Badger failed to provide evidence supporting its allegations.

8. Boundary Waters Broadcasters, Inc., licensee of Station WELY, Ely, Minnesota, and Pine City Broadcasting Company, Inc., licensee of Station WCMP, Pine City, Minnesota, did not respond to the Order to Show Cause as to why their respective licenses should not be

⁴ The coordinates for Channel 221C3 at Hermantown are 46-49-30 and 92-17-00.

⁵ The coordinates for Channel 233A at Ely are 47-53-40 and 91-51-50.

⁶ The coordinates for Channel 265A at Pine City are 45-54-07 and 92-57-25.

⁷ The coordinates for Channel 289A at Siren are 45-50-56 and 92-27-13.

modified to specify operation on Channel 233A and Channel 265A. Accordingly, pursuant to Section 1.87 of the Commission's Rules, Boundary Waters Broadcasters, Inc. and Pine City Broadcasting Company, Inc., are deemed to have consented to the proposed modification.

9. Commission policy requires reimbursement to affected stations for the reasonable costs associated with changing frequencies. See Circleville and Columbus, Ohio, 8 FCC 2d 159 (1967). Harbor has stated its intention to reimburse Boundary Waters Broadcasters, Inc. and Pine City Broadcasting Company, Inc. for all reasonable expenses incurred in changing their frequency to the new channel.

10. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective February 24, 1997, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

| <u>Community</u> | <u>Channel No.</u> |
|-----------------------|--------------------|
| Ely, Minnesota | 233A |
| Hermantown, Minnesota | 221C3 |
| Pine City, Minnesota | 265A |
| Siren, Wisconsin | 289A |

11. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit for Channel 221A, Hermantown, Minnesota, IS MODIFIED to specify operation on Channel 221C3 in lieu of Channel 221A, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

12. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit for Station WELY, Ely, Minnesota, IS MODIFIED to specify operation on Channel 233A in lieu of Channel 221A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in permit BMPH-911205IC except for the channel as specified above. Any changes, except those specified require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, provided the transmission facilities comply in all respects with permit BMPH-911205IC, except for the channel as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

13. IT IS FURTHER ORDERED, That pursuant to section 316(a) of the Communications Act of 1934, as amended, the license for Station WCMP, Pine City, Minnesota, IS MODIFIED to specify operation on Channel 265A in lieu of Channel 221A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in license BLH 7884 except for the channel as specified above. Any changes except those specified require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, provided the transmission facilities comply in all respects with license BLH 7884, except for the channel as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

14. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this Order to the following:

Pine City Broadcasting
Company, Inc.
Station WCMP

Boundary Waters
Broadcasters, Inc.
Station WELY

RR Two
Pine City,
Minnesota 55063

904 South Central Avenue
Ely, Minnesota 55731

15. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a **change** in community of license of an FM or television allotment or an upgrade of an existing FM allotment, **if the request is granted**, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Harbor Broadcasting, Inc., permittee of Channel 221A, is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade at Hermantown, Minnesota.

16. The window period for filing applications for Channel 289A at Siren, Wisconsin, will open on February 24, 1997 and close on March 27, 1997.

17. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

18. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process for Channel 289A at Siren, Wisconsin, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau